Supreme Court, U. S.
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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-80

TRUCKDRIVERS, CHAUFFEURS AND HELPERS LOCAL UNION NO. 100, AN AFFILIATE OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Petitioner.

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF CHARGING PARTY DURO PAPER BAG MANUFACTURING COMPANY IN OPPOSITION

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COUNTERSTATEMENT OF THE CASE

The major issues litigated befor the National Labor Relations Board and the Sixth Circuit Court of Appeals were:

1) Was there an agreement reached between the employer and the union?

2) Could the employer reasonably rely upon the ap-

parent authority of the union representatives to conclude the agreement?

These were primarily issues of fact. Three tribunals — the NLRB Administrative Law Judge, the members of the NLRB and the Court of Appeals have answered these questions affirmatively.

ARGUMENT

THE PETITION FOCUSES ON SPECIFIC QUESTIONS OF FACT WHICH HAVE BEEN DETERMINED BELOW BY THREE SEPARATE TRIBUNALS AND BECAUSE NO IMPORTANT ISSUES OF POLICY OR LAW ARE RAISED, THE CASE IS AN INAPPROPRIATE DISPUTE FOR REVIEW.

This Court has repeatedly held that it will not grant certiorari to review evidence and discuss specific facts. *United States* v. *Johnston,* 268 US 220 (1975).

The Court's rationale for its disinclination to review fact findings by lower tribunals was succinctly explained in *Kennedy* v. *Silas Mason Co.,* 334 US 249 (1948):

> "The hearing of contentions as to disputed facts, the sorting of documents to select relevant provisions, ascertain their ultimate form and meaning in the case, the practical construction put on them by the parties and reduction of the mass of conflicting contentions as to fact and inference from facts, is primarily for a court of one judge, not for a court of nine." 344 U.S. at 256.

Petitioner asserts that there was no meeting of the minds with respect to the arbitration clause and list of arbitrators. This is a factual contention rejected by all those tribunals that have considered the question.

The record shows that the joint list of arbitrators was to be completed by each party submitting a separate list. This was the recollection of the Company negotiator Rains (A 119 lines 25-30).[1] Union negotiator Rigney also recalls "both parties could pick so many men" (A 194 line 5).

Union negotiator O'Banion testified that he agreed to send over to Rains the union's list which, when combined with the employer's list, would be the "joint list" that was to be supplied as Exhibit 1 (A 127, 128).

According to the contract, the precise method of selecting which arbitrator on the list would be used for a particular case was left to the "mutual agreement" of the parties — which is not an unusual procedure in labor agreements. In summary there was substantial evidence in the record to support the findings of the administrative law judge, NLRB, and the Sixth Circuit.

All of the arguments of petitioner are founded on its opinion that the parties did not reach a "meeting of the minds" concerning the method of selection of the arbitrators. Petitioner seeks to relitigate this factual issue.

We believe the "two-court rule" to be applicable. This Court has held that the Supreme Court, which possesses no empirical expertise to set against careful and reasonable conclusions of lower courts and fact finding tribunals "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Berenyi* v. *District Director, Immigration and Naturalization Service,* 385 U.S. 630 (1967); *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.,* 336 U.S. 271 (1949); *Stewart* v. *Hayden,* 161 U.S. 1 (1898);

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[1] Record references are to the appendix in the United States Court of Appeals.

Comstock v. *Group of Institutional Investors,* 335 U.S. 211 (1948), and the long list of cases cited therein.

In the case at bar there has been concurrent findings by the Court and NLRB that the parties did reach substantial agreement upon the method of supplying the names of the arbitrators which would constitute the joint list and the manner of selection of the arbitrator. Such findings are free from obvious and exceptional error.

In all events the petition raises no novel or important issues of national policy. The case is inappropriate for review by the Supreme Court of the United States.

CONCLUSION

For all the above reasons the petition for certiorari should be denied.

Respectfully submitted,

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